Statement of Shaun Donovan, Commissioner, Department of Housing Preservation and Development, New York, New York

Testimony Before the Subcommittee on Select Revenue Measures
of the House Committee on Ways and Means

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Good morning Chairman Neal, Ranking Member English, and members of the Subcommittee. I am Shaun Donovan, Commissioner of the New York City Department of Housing Preservation and Development (HPD), the nation's largest municipal housing development agency. I want to thank you for inviting me to testify before the subcommittee today, and I especially want to thank Chairman Rangel. New Yorkers are fortunate to have him representing us – he is a tireless advocate for his constituents and for affordable housing.

HPD is the nation's largest municipal housing development agency. As part of our responsibility, HPD directly allocates approximately $12.5 million in 9% tax credits each year. In my capacity as commissioner of HPD, I also serve as Chairman of the Housing Development Corporation (HDC), New York City's Housing Finance Agency which provides bond financing for affordable housing projects.

The crisis of abandonment that plagued many New York communities in the 1970's and '80's was solved by rebuilding neighborhoods, driving down crime and improving schools. Hundreds of thousands of people have moved to New York to share in our success and we are predicting that New York City's population will grow by close to a million by the year 2030. That population growth will add to our current challenge of housing affordability. On Earth Day, Mayor Bloomberg unveiled PlaNYC 2030, which includes a commitment to create enough affordable and environmentally sustainable housing for our growing population. That pledge builds on the commitment made in Mayor Bloomberg's New Housing Marketplace Plan to fund the construction and rehabilitation of 165,000 affordable apartments and homes by 2013.

We have already reached 1/3 of our goal -- 55,000 units of affordable housing have been created or preserved in New York City since 2004. It hasn't been easy. The rapid rise in real estate prices in New York, also experienced by many other cities around the country, has challenged us to find new and creative ways of doing business. Through rezonings, inclusionary housing initiatives and changes to our local tax incentive programs, we have been able to harness the strength of the private market to create affordable housing. This would not be possible without federal partnership in the form of low-income housing tax credits and tax-exempt private activity bonds. These two programs have created thousands of units of housing that otherwise would not be affordable to low- and moderate-income New Yorkers.

With the scale and ambition of the Mayor's housing plan we now face a challenge caused by our success – we find ourselves in a position of needing more tax-credits and private activity bond volume cap to be able to keep pace with the demand and need for more affordable housing. Throughout New York State, demand for 9 percent credits outstrips their supply by 3 to 1.

In addition to allocating more credits, we hope that the subcommittee will consider changes to the program that have been championed by NCSHA and others, most notably - fixing the housing credit percentages at 4 and 9 percent, allowing 9 percent projects in difficult development areas to use HOME funds and still be eligible for the 30 percent basis boost, and synchronizing HOME and tax credit rents and eligibility rules.

The actual percentages for the "4" and "9" percent tax credits fluctuate monthly and are consistently below those maximum amounts. For example, the May 2007 percentages are 3.47% and 8.11%. Fixing the credit percentages at 4 and 9 percent would increase the value of the credits, make the program easier to administer, and make the process more transparent.

Tax credit projects in difficult development areas are eligible for a 30 percent increase in the value of the credits. The additional 30 percent is lost if the project includes HOME funds. Difficult development areas are by definition areas that have high construction, land, and utility costs relative to the area median income. It is because the costs are high that additional subsidies are needed. Reducing the value of the credits because of the presence of HOME funds limits the flexibility needed in tight markets to create affordable housing.

Similarly, synchronizing HOME and tax credit rents and eligibility rules would make the combined use of these two programs much easier. Issuers would benefit from simpler and more predictable financial underwriting, and owners would be better able to stay in compliance with program rules after lease-up.

New York City is facing an immediate crisis in private activity bond volume cap, which we expect to deplete before the end of June. Without additional volume cap, 6,700 units of housing in our pipeline will not be built. We have shared with Chairman Rangel two possible solutions that we hope you will consider. The first is to allow for "recycling" or, "refunding" of multi-family bonds after principal repayments or pre-payments of the bonds. This is already permitted in the single family program and we believe that this proposal could free up millions of dollars in volume cap at little or no cost to the federal government. The second is to allocate additional volume cap to States with high cost areas.

A multi-family bond allocation penalty occurs through "burn-off" when tax credit equity proceeds pay off construction bonds after two to three years because affordable developments can not support the full amount of the bonds issued. Thus, through early principal repayments and unscheduled prepayments, a large portion of multi-family housing bond proceeds are lost via burn-off and bonds that could have otherwise been outstanding for as long as 48 years are used only for a few years. Bonds issued for single family homes and student loans are allowed to be recycled within their first ten years of issuance. This proposal does not call for low income tax credits to be attached to the recycled bonds as they are in the initial issuance.

Two changes, one in regulation and one in statute are required to allow for the refunding of multi-family bonds. The first, Treasury regulation 1.150-1(d)2(ii)(B, should be amended to specifically provide that the obligor of an issue used to finance qualified residential rental projects does not include the recipient of the loan. Under current regulations, if the issuer does not know who the borrower will be for the recycled project at the time of original issuance, then the bonds can not be re-used. Rental projects would thereby be treated like obligors of issuers financing qualified mortgage loans, qualified student loans and similar program investments. The second change needed is to Section 42 of the Code providing that recycling prepayments into other projects, either directly or through a refunding issue, satisfies the requirement of Section 42(h)(4)(A)(ii) that "principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing." This broadening would permit recycling.

We also hope you will consider raising the allocation of volume cap for high cost areas. The tax credit program allows for a richer credit in difficult development areas (DDAs) out of recognition that it is more expensive to build in some markets than others. Similarly, an additional allocation of volume cap to States with difficult development areas would help States where the current volume cap allocation is not sufficient to cover costs and demand. This could be done either by making an additional allocation to States for the population living in a DDA, which would increase the allocation of volume cap for 37 States and by 17% overall, or by increasing the volume cap for States with more than half of their population living in a DDA. This would increase the overall allocation of volume cap by 13%.

We are also strongly supportive of Chairman Rangel's proposal for a new tax credit to create housing for people earning between 60 and 80 percent of median income. We believe that such a proposal is especially needed, and would work especially well, in high cost areas. Should Congress allocate additional volume cap for high cost areas, it could be made in tandem with the flexibility to use tax credits to serve this income bracket.

In keeping with the current affordable housing tax credits, the majority of new affordable housing development in New York follows an 80/20 model, in which 80% of the units are market rent and 20% of the units serve people with incomes below 50% of area median income. But there is a real need for affordable housing for people higher on the income spectrum. Over half of the renters in New York City spend more than 30% of their income on rent. We believe an additional credit could work in tandem with the low-income housing tax credit and private activity bonds.

In New York City, residential rental buildings are eligible for tax exempt bond financing and 4% as-of-right tax credits if 20% of the units are rented to households earning less than 50% of area median income or 25% of the units rented to households earning less than 60% of area median income. This program has been widely utilized in Manhattan where there is extensive 80/20 development that includes 20% of the units at 50% area median income. Outside New York City, 20% of the units must be at 50% of area median income or a developer can provide 40% of the units to households earning less than 60% of area median income.

A “mixed income housing tax credit” (MIHTC) would reflect the same characteristics of the low income housing tax credit: utilize tax-exempt financing, be paired with the low-income housing tax credits, and target a small segment of overall tax credit unit production. Though project types and characteristics would vary by region, the following proposal characterizes a LIHTC/MIHTC structure that would be typical for the New York region.

A new MIHTC could be based on and coupled with the existing as-of-right 4% LIHTC credit. Coupling or linking the credits provides a structure that doesn’t compete with, but instead builds upon the existing program. A MIHTC program could modify the 80/20 structure into a 50/30/20 or 60/20/20 structure, making projects eligible to receive tax credits not only on the 20% low-income units (as in an 80/20 structure) but also on an additional percentage of units if they are occupied by households earning up to 80% of AMI. A new tax credit rate would be created for this structure and it would be applicable to all 40% of the affordable units. Our modeling shows that a tax credit rate between 6-8% would be the most effective.

In closing, I’d like to thank you for the opportunity to testify, and for prioritizing the programs that we’re discussing today. The subcommittee’s leadership has been crucial to the success we’ve had developing and preserving affordable housing in New York City, and across the nation.